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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,814	08/21/2003	Lucien A. Couvillon JR.	S13.12-0146	7877

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EXAMINER

DEMILLE, DANTON D

ART UNIT	PAPER NUMBER
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3771

DATE MAILED: 10/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/645,814

Applicant(s)

COUVILLON, LUCIEN A.

Examiner

Danton DeMille

Art Unit

3771

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 October 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE


8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


Danton DeMille
Primary Examiner
Art Unit: 3771

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that Hegde relates to an entirely different type of device that is implanted in the body however, it is maintained that Hegde is relevant because Hegde teaches using an electroactive polymer actuator as does applicant, in synchrony with the heart beat of the user as does applicant, for exerting compressive forces to the user's circulatory system for improving blood flow as does applicant. Hegde teaches the same overall method and device claimed the only difference is Hegde is used internal and the instant invention is external.

Madden discloses the details of the electroactive polymer as that recited in the claims. Madden may not teaches the exact same purpose as applicant's invention however, that is not necessary because Brown already teaches this convention. The details of the electroactive polymer are well known as admitted by applicant and substantiated by Madden.

Brown teaches that it is conventional to use an electroactive polymer actuator for exerting a compressive force on the exterior portion of the user's body. The details of the composition of the EAP is also conventional as admitted by applicant and taught by Madden.

Brown also teaches the device is for "sequential application of compressive forces for squeezing or constricting the muscles thereof to prevent stasis of blood" to "enhance venous blood flow back to the heart". Shabty also teaches applying sequential compressive forces for squeezing or constricting the muscles to prevent stasis of blood and takes the method a step further by also timing the compressions with the EKG signal. Clearly Shabty teaches the advantage of timing the compressions with the EKG in addition to the sequential compressions to enhance blood flow back to the heart. Timing the compressions with the heart beat augments the heart rather than working against it.

There appears to be no unobviousness to modify Brown to time the compressions with the EKG as is well known by both Shabty and Hegde. The details of the construction of the EAP are well known as admitted by applicant and Madden .